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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/376,811	08/18/1999	JOSEPH C. JENNIGES	494.004US1	6977
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GLEN E. SCHUMANN C/O MOSS & BARNETT 90 SOUTH SEVENTH STREET 4800 WELLS FARGO CENTER MINNEAPOLIS, MN 55402-4129			EXAMINER GORT, ELAINE L	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/376,811

Applicant(s)

JENNIGES ET AL.

Examiner

Elaine Gort

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,6 and 24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,6 and 24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The affidavits filed on 2/23/05 and 5/26/05 under 37 CFR 1.131 and/or under 37 CFR 1.132 has been considered but is ineffective to overcome the Ho et al. and Appelbaum reference. See rejection below for details.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the previous performance level" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the participant's reward" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the reward" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the previous lower performance level" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "each participants" in line 18. It is unclear if this is referring to participant or a newly claimed group of participants.

Claim 1 recites the limitation "the participant's selected level" in line 21 and "the participant selected level of performance" in line 25. It is unclear if these are referring to the same limitation. Perhaps there's a typo.

Claim 6 recites "a participant" in line 1. It is unclear if this is referring to an additional participant or the one claimed in claim 1, for example as referred to in line 8.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho et al. (US Patent 6,120,300) in view of Appelbaum (Self-efficacy as a mediator of goal setting and performance Some human resource applications) and Examiner's Official Notice.

Ho et al. discloses the claimed method for providing incentive but is silent regarding the participant participating in the pre-setting and selection of their goals and rewards, and where the rewards are of greater value for higher achievement levels.

Appelbaum discloses, on page 11 under the title "Absenteeism", that it is old and well known in the art of incentive and reward systems for participants to partake in the pre-setting and selection of goals and rewards to in order to encourage or motivate a

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specific performance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Ho et al. with a participant pre-selecting their own goal and reward as taught by Appelbaum in order to motivate the individual to perform.

Examiner takes Official Notice that it is notoriously old and well known in the art of incentive and reward systems to offer higher valued rewards for higher levels of achievement to provide an incentive to perform at the higher levels. For example, the US Patent Office offers higher bonuses to Examiner's for higher "production". It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Ho et al. and Appelbaum, as modified above, with rewards of increasing value for higher achievement levels as taught by Examiner's Official Notice in order to motivate individuals to perform at higher levels.

***The following discussion is provided for clarification:***

A method for providing incentive comprising:

Creating a hierarchy of participant performance levels defined by a program sponsor, including a minimum threshold level of performance, each successive performance level above the minimum threshold level of performance defining a higher degree of achievement than the previous performance level (Ho system stores goal data established by an instructor or other individual/sponsor which includes threshold levels and desired levels of performance including milestones and rewards representing desired levels of performance. See abstract, columns 5 and 6 and figure 1);

Associating at least one reward with achievement of each specific level of performance, such that the participant's reward for achieving each performance level above the minimum threshold level is of greater value than the reward associated with a participant achieving the previous lower performance level (Ho et al. discloses the associating of achievement levels with rewards in figure 1 and column 6 but is silent regarding the use of higher valued rewards for higher levels. Examiner has taken Official Notice above to teach that it would have been obvious to modify the method to have rewards of increasing value to motivate individuals to perform at the higher levels.);

Requiring each participant to select a specific level of performance to be achieved by the participant from the hierarchy of sponsor-defined levels of performance (The Examiner has used Appelbaum to show that it is old and well known in the art of incentive and reward systems for participants to partake in the pre-setting and selection of goals and rewards in order to encourage or motivate a higher performance; and therefore that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Ho et al. with a participant pre-selecting their own goal and reward as taught by Appelbaum in order to motivate the individual to perform.);

Storing actual performance data of each participant (Ho et al. stores performance data in order for it to be used in the performance analysis, see figure 1);

Comparing the actual performance data of the participant to the selected performance level criteria, and generating a result indication whether the participant

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achieved the participant selected level of performance (See Ho et al. performance analyzer 106 in figure 1);

Granting to the participant the reward associated with the participant selected level of performance only if the participant achieved at least the participant selected level of performance (See Ho et al. figure 1 where the student is granted the reward associated with the selected level of performance. Examiner has modified Ho et al. with Appelbaum to have the participant (or student, for example) pre-select the level of performance and reward they plan to achieve and thus would only be given the reward for which they committed to achieving);

(Regarding claim 6) where a participant only receives the reward associated with the selected level of performance even if the participant achieves a higher level of performance than the selected level of performance (Examiner has modified Ho et al. with Appelbaum to have the participant (or student, for example) pre-select the level of performance and reward they plan to achieve and thus would only be given the reward for which they committed to achieving); and

(Regarding claim 24) modifying the sponsor-defined levels of performance using the actual performance data of the participant (Ho et al. discloses in column 1 lines 64+ that the method allows the instructor to set when and what to reward a student and that the Ho et al. method provides the instructor to be "more aware of the strengths, weaknesses and preferences of the student and should be able to set more appropriate goals and rewards for the student").).

***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 6 and 24 have been considered but are moot in view of the new ground(s) of rejection. See explanation above for further details.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Tuesday and Friday.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571/272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Elaine Gort', with a long horizontal flourish extending to the right.

Elaine Gort  
Examiner  
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October 26, 2005